

**United States Department of Labor
Employees' Compensation Appeals Board**

L.J., Appellant)	
)	
and)	Docket No. 10-9
)	Issued: September 20, 2010
U.S. POSTAL SERVICE, CAPITAL)	
PERFORMANCE CLUSTER, Washington, DC,)	
Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 30, 2009 appellant filed an application for review of a July 30, 2009 decision of the Office of Workers' Compensation Programs which denied her claim for wage-loss compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant was disabled from June 1 to 17, 2009 causally related to her May 3, 1997 employment injury.

FACTUAL HISTORY

On May 3, 1997 appellant, then a 32-year-old mail carrier, sustained an injury to her right ankle and leg while walking her route. She did not stop work at that time.¹ The Office accepted appellant's claim for right ankle sprain, nonunion of a fracture and authorized a right ankle

¹ The record reflects that appellant has a September 18, 1990 claim for an injury to her right foot and leg. No. xxxxxx742. On November 30, 1998 the Office doubled this claim with the present claim.

arthroscopy on August 11, 2000. Appellant underwent an arthroscopic synovectomy of the right ankle on April 2, 2008. She received wage-loss compensation benefits.²

Dr. J. Michael Joly, an attending Board-certified orthopedic surgeon, released appellant to light duty on May 13, 2008. He submitted follow-up reports noting that, while the April 2, 2008 surgery did not resolve appellant's symptoms, she was able to work within restrictions. Dr. Joly also recommended weight reduction and physical therapy.

In a March 12, 2009 duty status report, Dr. Joly listed work restrictions that were consistent with the job activities provided by the employing establishment. In a May 7, 2009 report, he noted appellant's status and recommended continued light duty.

On June 17, 2009 appellant filed a Form CA-7 for wage-loss compensation from June 1 to 17, 2009.

In a report dated June 18, 2009, Dr. Joly reviewed the history of the May 7, 1997 injury and appellant's subsequent symptoms. He diagnosed recurrent lateral right ankle pain due to synovitis, traumatic arthropathy and scar tissue. Dr. Joly noted administering an injection to treat appellant's symptoms and advised that she should follow-up as needed. He advised that appellant could continue working within her physical restrictions.

By letter dated June 29, 2009, the Office informed appellant of the evidence needed to support her claim and requested that she submit evidence within 30 days.

In an undated statement, appellant attributed her condition and disability to her 1997 work injury. She contended that she was disabled commencing June 1, 2009 due to her medication, which made her drowsy and unable to work. Appellant noted that she was sent home.

In a July 23, 2009 report, Dr. Joly noted that appellant had chronic, recurrent pain and swelling as a result of a work-related injury to the right ankle 12 years earlier. He determined that her current examination was consistent with recurrent pain and swelling in the right ankle due to chronic tendinitis. Dr. Joly recommended that appellant maintain a normal body weight, low impact exercise and permanent light duty with sedentary work only and no driving.

By decision dated July 30, 2009, the Office denied appellant's claim for disability for the period June 1 to 17, 2009. It determined that the medical evidence of record failed to establish her disability for the claimed period.

LEGAL PRECEDENT

The term disability as used in the Federal Employees Compensation Act³ means the incapacity because of an employment injury to earn the wages that the employee was receiving

² In a June 14, 2007 decision, the Office found that appellant's reemployment as a modified carrier fairly and reasonably represented her wage-earning capacity effective March 13, 2007.

³ 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.5(f).

at the time of injury.⁴ For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.⁵ Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁶ The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁷

The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify their disability and entitlement to compensation.⁸

The Office is not precluded from adjudicating a limited period of employment-related disability when a formal wage-earning capacity determination has been issued.⁹

ANALYSIS

The Office accepted appellant's right ankle condition and authorized surgery performed on August 11, 2000 and April 2, 2008. Appellant filed a Form CA-7 claim for compensation for the period June 1 to 17, 2009. On June 29, 2009 the Office requested that she provide medical evidence that would establish a causal relationship between her accepted conditions and her present disability. Appellant did not submit sufficient medical evidence to establish that her claimed disability was due to her 1997 employment injury.

The medical evidence most contemporaneous with the claimed dates of disability are Dr. Joly's June 18 and 23, 2009 treatment records. Dr. Joly noted appellant's May 7, 1997 injury and advised that she complained of increased symptoms. He administered an injection and advised that she could continue working within her restrictions. Dr. Joly did not address whether appellant was disabled from her light-duty work from June 1 to 17, 2009. He stated generally that she had chronic, recurrent pain and swelling as a result of her work-related injury but could work at sedentary duty with no driving. In neither report did he support that appellant was totally disabled due to residuals of the accepted employment injury. Rather, Dr. Joly advised that she could continue work within restrictions. As noted, the Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed.¹⁰ The medical evidence of record does not establish appellant's claim of disability for the period claimed.

⁴ *Paul E. Thams*, 56 ECAB 503 (2005).

⁵ *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁶ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *Gary J. Watling*, 52 ECAB 278 (2001).

⁷ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007).

⁸ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001)

⁹ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁰ *See supra* note 8.

The Board finds that appellant has not met her burden of proof to establish disability from June 1 to 17, 2009 causally related to her accepted right ankle condition.

On appeal, appellant generally disagreed with the denial of her claim. She indicated that she was sent home during the aforementioned period because she was on medication. As noted, she did not submit sufficient medical evidence to establish disability due to her accepted right ankle condition.

CONCLUSION

The Board finds that appellant did not establish disability from June 1 to 17, 2009 due to her May 3, 1997 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 30, 2009 is affirmed.

Issued: September 20, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board